

## The complaint

Mr I complains that Evolution Insurance Company Limited (EICL) deemed his boiler beyond economic repair following an engineer's visit and won't repair or replace it. He believes the action taken by the engineer caused his boiler to break and that he received poor service from EICL in relation to his claim.

## What happened

Mr I held a Home Care policy, which is underwritten by EICL. The policy commenced on 18 December 2023 for a period of 12 months and incurred a monthly premium of £16.88. The policy included cover for repairs or assistance following a boiler emergency or breakdown unless the boiler is beyond economic repair (BER).

On 3 January 2024, Mr I contacted EICL to report a fault with his boiler, which was causing a continuous leak. EICL appointed an engineer to attend Mr I's property to assess the cause of the fault. This visit was scheduled to take place on 4 January 2024.

On 4 January 2024, EICL's appointed engineer attended Mr I's home. They determined that the fault with the boiler was due to three parts failing, which needed to be replaced. The engineer ordered the required parts and a further visit was scheduled for 10 January 2024 when it was anticipated that another engineer would attend to undertake the boiler repair.

Mr I said that, while his boiler was leaking fluid at the time of the engineer's visit, it was fully functional. He stated the boiler was providing hot water and heating to his household notwithstanding the leak and parts failing. However, this changed on 10 January 2024.

During the engineer's visit on 10 January 2024, they turned off the power to the boiler in order to fit the replacement parts. But when they turned the boiler back on it failed to fire up. This was put down to the fan failing when power to the boiler was reintroduced, which EICL later told Mr I was a known design flaw of his boiler.

EICL subsequently informed Mr I that the cost of repairing the fan would exceed the value of his boiler. So, it said it was unable to repair his boiler under his policy because it was deemed BER. It offered him a quotation for a new boiler to assist with its replacement.

Mr I complained to EICL about what had happened. He said the repair undertaken by the engineer on 10 January 2024 had worsened the issue with his boiler rather than resolving the initial problem. And he argued that the action taken by the engineer during their visit had caused the boiler to break. He wanted EICL to either replace or repair the boiler and was unhappy his household had been left without heat and hot water during the winter months.

EICL investigated Mr I's concerns but didn't uphold his complaint. It maintained the boiler hadn't broken because of the actions taken by its engineer and cited a known design flaw as the cause of the issue. It explained that the value of Mr I's boiler had been correctly calculated, which had led to a correct decision being taken that the boiler was BER. It stated it had applied the policy terms correctly in declining to repair the boiler but offered to refund him the cost of a month's premium as a gesture of goodwill.

Being dissatisfied with how EICL had resolved his complaint, Mr I asked our service to investigate what had happened. Our investigator assessed this complaint and empathised with Mr I. They initially didn't recommend upholding this complaint as they were persuaded that the engineer hadn't negligently caused the boiler to break. And they said EICL had correctly deemed the boiler to be BER and had no obligation to repair it under the policy.

Mr I rejected our investigator's view of this complaint and argued that he should have been informed that a known design flaw could cause his boiler to break. Our investigator considered what Mr I had said and decided to uphold his complaint. They agreed Mr I should have been informed of the design flaw with his boiler and said they weren't persuaded that a design flaw had caused the boiler to fail. They recommended that EICL repair the boiler and pay £100 in compensation to Mr I. But EICL argued that no new evidence had been provided by Mr I to rebut its opinion on the cause of the boiler failure and questioned the rationality of our investigator's change of view.

Our investigator reassessed the complaint and asked EICL to provide evidence proving that a design flaw had caused the boiler to break. After EICL shared evidence of this, our investigator reverted to their original view of this complaint. But Mr I disagreed and asked an ombudsman to decide his complaint.

### **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Where the information I've got is incomplete, unclear or contradictory, as some of it is here, I must base my decision on the balance of probabilities. I'd like to thank Mr I and EICL for the level of detail contained within their submissions. I've read and considered all the information provided. If I haven't specifically referred to a point that Mr I or EICL have made it isn't because I haven't considered it. My decision will focus on what I think are the key issues, which is an approach that reflects the informal nature of this service.

This service is an informal dispute resolution service. When considering what's fair and reasonable, I'm required to take into account a number of matters, which include relevant law and regulations, regulators' rules, guidance and standards, codes of practice, the terms and conditions of any insurance policy and, where appropriate, what I consider to have been good industry practice at the relevant time. I'm not limited to the position a court might reach.

I'm sorry to hear about the difficulties Mr I experienced here. I know he feels very strongly about this matter and I appreciate the reasons he brought his complaint to our service. While I sympathise with him, the issue that I must determine is whether EICL made a mistake, or treated him unfairly, such that it needs to now put things right. And, having thought carefully about everything Mr I and EICL have said, I'm not going to uphold this complaint. While I appreciate Mr I will be disappointed by this outcome I hope he can understand my reasons.

The first part of this complaint is about the service Mr I received from EICL's after reporting a fault to his boiler. So, I'll address that issue first.

Mr I has said that his boiler was operational prior to the engineer turning it off on 10 January 2024 and I accept his evidence. I say this because EICL hasn't disputed this. It's clear from the available evidence that the reason Mr I contacted EICL to assist him with a boiler repair was due to a constant leak. I'm satisfied this issue was something that was, understandably, causing concern to Mr I and that he wanted EICL to remedy.

I'm satisfied that when Mr I reported the fault with his boiler EICL promptly recognised that the issue was covered by his policy. As the leak was a "*persistent fault*" it was properly considered to be a boiler breakdown issue.

EICL promptly allocated an engineer to attend Mr I's home; it having offered him an appointment for the following day. I think EICL, likely, prioritised his request for assistance given the time of year and weather. This indicates good practice on the part of EICL.

From the evidence available, I'm satisfied that the engineer that attended Mr I's home on 4 January 2024 promptly diagnosed the fault that was causing the boiler to leak. Their opinion was that the flow turbine adaptor, pressure relief valve and return unit required replacement in order to remedy the fault. At this stage the boiler fan was operational and there was nothing to indicate it would break six days later when repair was attempted.

I'm satisfied that EICL scheduled a repair appointment at the earliest opportunity possible. The replacement parts were ordered on 5 January 2024 and delivery of these parts would have taken some time. Six days isn't an unreasonable period of time between the diagnosis and repair appointments. And, as the boiler was still operational prior to 10 January 2024, I'm satisfied Mr I's household wasn't left without heating and hot water facilities whilst waiting for the repair appointment to take place.

Given the above chronology, I'm satisfied that EICL provided assistance under the policy in a timely and proactive manner. I'm persuaded that no error was made and there were no areas of poor service prior to 10 January 2024.

I'll turn now to whether EICL are responsible for causing Mr I's boiler to break during the engineer's visit on 10 January 2024.

I've carefully considered the available evidence to assess the likely cause of the boiler breaking. EICL has provided evidence that demonstrates it sought the opinion of both a field service manager and manufacturer of the boiler after the boiler broke in efforts to obtain a diagnosis for the cause of the boiler failing. These enquiries have shown that switching off and reintroducing the power to Mr I's boiler can lead to a surge, which can sometimes cause the fan to fail. EICL says this is the most likely explanation for what happened here.

Mr I hasn't provided an independent opinion to rebut EICL's opinion on the cause of the boiler failing and is aware he can do so. I'm sure Mr I will understand that, in the absence of rebuttal evidence from him, I'm unable to discredit or discount EICL's opinion.

Mr I asserts that the engineer that attended his home on 10 January 2024 negligently caused the boiler to break. He's relied on a clause in his policy with EICL which states "*we'll take all reasonable steps to avoid damaging your property during a repair*". The terms go on to advise that "*occasionally there may be some unavoidable damage*" and that EICL will only compensate a policy holder for damage caused by wilful negligence.

Here, the fault that caused the boiler to fail occurred as a result of turning the power to the boiler off and on again. This action was necessary because the power to the boiler had to be isolated in order to safely fit the replacement parts that were necessary to remedy the leak that Mr I initially reported on 4 January 2024. This would have been required whenever the repair to the boiler took place. And, in the overall circumstances, I'm persuaded that it wasn't unreasonable for the engineer to turn the power to the boiler off and on again. This means I'm not persuaded that the damage to Mr I's boiler was caused by wilful negligence on the part of EICL's appointed engineer. It follows that I'm satisfied this clause doesn't apply in the overall circumstances of this complaint.

Mr I asserts that he ought to have been informed that a design flaw could result in his boiler breaking. But I'm persuaded the flaw wasn't known by the engineer attending Mr I's property on 10 January 2024. I say this because it wasn't until enquiries were made following the engineer's visit on 10 January 2024 that EICL became aware that a design flaw that could cause the fan to break. As this wasn't common knowledge, I'm not persuaded the design flaw was foreseeable. And, in circumstances where a flaw is not known by an engineer or foreseeable, it wouldn't be reasonable to expect them to make someone aware of it.

The final part of Mr I's complaint relates to whether EICL has acted fairly and reasonably in declining to repair his boiler and deeming it BER. So, I'll focus on that issue next.

I understand that Mr I's boiler was 8 years old at the time it broke. EICL asserts that "*boilers have a working life of, usually 7 to 20 years*". This is in line with information that's generally available about the operational longevity of a boiler. So, I accept what EICL says here.

EICL has taken the age of Mr I's boiler into account in calculating its value. It's stated that the value of a boiler depreciates over time. And it's provided evidence that demonstrates its use of industry standard formula to calculate what it assessed Mr I's boiler to be worth.

I've carefully considered the formula EICL used in calculating the value of Mr I's boiler. I'm satisfied it applied industry standard formula correctly in reaching a calculation that, by year 8, Mr I's boiler would be valued at £387.41. I'm persuaded that the rate of depreciation that EICL applied here is fair and reasonable.

Because Mr I's boiler was valued at £387.42, if the repair costs were assessed to exceed that value, EICL would deem the boiler BER, which is in line with industry practice. I've seen evidence that satisfies me the cost of repairing or replacing the fan was £497. This persuades me that EICL correctly assessed Mr I's boiler as BER.

The policy that Mr I held with EICL explains how it settles claims for a boiler repair. The terms outline in clear and unambiguous terms that:

*"If, after an engineer visit and assessment, repair costs are estimated to be more than the current value of the boiler we will not be able to carry out a repair but will try to assist you with other options."*

The policy goes on to explain that EICL can, in certain circumstances, replace a policyholder's boiler where it's been assessed as BER. The terms confirm:

*"If we've assessed that your boiler is beyond economic repair and you have been continuously covered by us for at least 12 months, we will:*

- Replace your boiler if it is less than 7 years old (since installation as new) at the time of breakdown...or*
- Provide a £250 contribution, less your policy excess, to a new boiler from our approved installers if your boiler is at least 7 years old."*

But here, Mr I hadn't held his policy for at least 12 months by the time the fault occurred. So, this clause didn't apply. I think it's worth pointing out that, even if he had held his policy for the requisite length of time, this clause wouldn't have applied because Mr I's boiler was 8 years old. So, EICL wasn't obliged to replace his boiler under the policy Mr I held with it.

In the overall circumstances, in informing Mr I that a boiler repair or replacement wasn't covered under his policy, I'm satisfied EICL acted in line with the terms and conditions.

I'm pleased to see EICL tried to assist Mr I with other options in light of the fact it wasn't able to repair or replace his boiler. I can see it offered him a comprehensive quotation for a new boiler on 10 January 2024. I'm satisfied EICL recognised the urgency of the situation given that Mr I had no functioning boiler during the winter months.

I mentioned in the background to this complaint that EICL offered to refund Mr I one month's premium payment, namely £16.99, as a gesture of goodwill. I understand Mr I rejected that offer. As part of this decision I wouldn't have directed EICL to refund any premium paid. This is because Mr I had the benefit of cover under the policy, used the policy to request assistance and a repair was declined in line with policy terms. So, I'm satisfied that EICL acted fairly in offering to refund one month's premium payment to resolve Mr I's complaint. If Mr I would like to accept that offer he should contact EICL directly to discuss accepting it.

I appreciate that Mr I feels very strongly about the issues raised in this complaint and I've carefully considered everything he's said. But I'm not going to uphold this complaint for the reasons outlined. This now brings to an end what we, in trying to resolve Mr I's dispute with EICL, can do for him. I'm sorry we can't help Mr I any further with this.

### **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr I to accept or reject my decision before 8 February 2025.

Julie Mitchell  
**Ombudsman**